



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

THE CONFLICT BETWEEN STATE AND FEDERAL REGULATION OF RAILROADS

BY WALKER D. HINES,

New York City.

The Interstate Commerce Act declares (section 3) that it shall be unlawful for any common carrier engaged in interstate commerce to make or give any undue or unreasonable preference or advantage to any particular person, locality or description of traffic in any respect whatsoever, or to subject any particular person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

If a common carrier on its own initiative should establish an intrastate rate which would work an unreasonable preference or prejudice to any shipping interest concerned with an interstate rate of the common carrier, such action would be a violation of this provision. For example, if a common carrier should establish an intrastate rate between St. Louis and Kansas City so low in comparison with the interstate rates established by it between Chicago and Kansas City as to subject those interested in traffic between Chicago and Kansas City to an undue prejudice or disadvantage, such action of the common carrier would be a violation of the Interstate Commerce Act.

If the intrastate rate which works the undue prejudice to the interest concerned in the interstate rate is established by state statute or by order of a state commission, such statute or order necessarily becomes void when such prejudicial effect is ascertained in the manner prescribed by the Interstate Commerce Act. To follow the illustration just used, if the legislature of Missouri should pass a statute or the commission of Missouri should make an order prescribing a rate between St. Louis and Kansas City which would work an undue prejudice to those interested in traffic between Chicago and Kansas City, such statute or order would be void when the fact of the undue prejudice had been duly established in a proceeding before the Interstate Commerce Commission.

The invalidity of the state statute or order under the circum-

stances supposed is the natural result of our form of government. Commerce among the states is committed to the care of Congress by the federal constitution. Direct burdens cannot be imposed upon that commerce by state legislation or under state authority. It would be difficult to conceive a more direct burden upon commerce among the states than an intrastate rate adjustment which works a prejudice to those concerned in interstate commerce so unreasonable that it would be in violation of an act of Congress if done by the common carrier on its own initiative. The federal constitution wisely provides that the laws of the United States made in pursuance thereof shall be the supreme law of the land "anything in the constitution or laws of any state to the contrary notwithstanding." The necessity for such a paramount national authority in matters of national concern is self-evident. This necessity is particularly striking with reference to the interstate rates of common carriers. It would be unthinkable under our scheme of government that the state of Missouri should decide the commercial fate of the city of Chicago even with reference to traffic from or to Kansas City. There is only one power which has a horizon broad enough to decide what ought to be done and only one power extensive enough to reach all the parties concerned and that power is the government of the United States.

Even if the Interstate Commerce Act applied only to specific interstate shipments, the act would control an interstate rate adjustment which unreasonably prejudiced such specific interstate shipments. But the act is not drawn to apply merely to interstate shipments. It is drawn to apply to common carriers which are engaged in interstate commerce and it applies to the entire business of those common carriers, excluding only the business which is expressly excepted. The only exception is business which is "wholly within one state." When a state rate adjustment affects business in addition to business that is wholly within one state, then the exception ceases to apply.

These results inevitably follow from an economic fact which no legislation can abolish and that fact is that the influence and effect of a rate of a railroad company extend beyond the specific traffic to which the particular rate primarily relates. If we could not only make but could put into effect the almost unthinkable supposition that every railroad rate could be regarded as a thing

entirely to itself and concerning no one but the shipper and the consignee of the specific article carried on that rate, then the public would have no reason for making any effort to secure a reasonable relative adjustment of rates so as to prevent one rate from being injurious to others who use other rates, and intrastate rates could stand without regard to their relationship to interstate rates. But if we abandon such a strenuous exercise of the imagination and face the facts, we know that there is an inter-relation of rates which is inherent in the nature of the business conducted by the railroads (and it is this inter-relation which is the basis of the whole scheme of public regulation of rates) and that no legislation can change this condition. It is equally a fact, which no legislation can change, that this inter-relation is not affected in the slightest degree by the imaginary line which separates one state from another. Hence a rate primarily dealing with an intrastate transaction may have a substantial practical effect upon some phase of interstate commerce; and the very arising of this condition inevitably brings the matter within the power of Congress.

This matter is settled by the decision of the Supreme Court of the United States on June 8, 1914, in the case of *Houston & Texas Railway Co. v. United States*, 234 U. S. 342. In that case the Interstate Commerce Commission prescribed maximum rates from Shreveport, Louisiana, to points in Texas intermediate between Shreveport and Dallas. The Commission also found that the carriers maintained higher rates from Shreveport to such Texas points than those prescribed by the Texas Commission from Dallas to such points under substantially similar conditions and that thereby an undue preference was given to Dallas. The Commission accordingly ordered the carrier to desist from charging higher rates from Shreveport to such intermediate points than were contemporaneously charged from Dallas toward Shreveport for equal distances. The order contained similar provisions concerning the rates from Shreveport and Houston to points intermediate between those two cities. Under this order the carriers had the right to correct the undue preference by increasing their intrastate rates from Dallas and Houston to the designated points in Texas up to the maximum rates which the Commission had prescribed from Shreveport for equal distances toward Dallas and Houston respectively.

The Supreme Court, in an opinion by Mr. Justice Hughes, upheld

this order. The court held that Congress had the power to control the intrastate charges of an interstate carrier to the extent necessary to prevent injurious discrimination against interstate traffic, and that Congress had exercised this power. The court pointed out that the provisions of section 3 of the Interstate Commerce Act against undue preference and undue prejudice were sweeping and that there was no exception with respect to an unreasonable discrimination against interstate traffic produced by the relation of intrastate rates. The following quotation is from the court's concluding remarks:

We are not unmindful of the gravity of the question that is presented when state and federal views conflict. But it was recognized at the beginning that the nation could not prosper if interstate and foreign trade were governed by many masters, and, where the interests of the freedom of interstate commerce are involved, the judgment of Congress and of the agencies it lawfully establishes must control.

Manifestly the Interstate Commerce Commission's duty to protect interstate commerce from unreasonably prejudicial intrastate rates and practices is precisely the same whether those injurious rates and practices are initiated by the carrier or by officers of the state.

The doctrine of the Shreveport case applies, of course, not only to unlawful discriminations in rates but to all acts of prejudicial conduct required under state authority which would be unlawful under the Interstate Commerce Act if committed by carriers on their own initiative. For example, this statement includes prejudicial discriminations or burdens as to practices such as the unequal distribution of cars and the preferential movement of trains or of particular sorts of traffic.

So far the writer has dealt with this matter from the standpoint merely of the prejudice to specific interstate traffic conducted in competition with the intrastate traffic which enjoys the preference. But the paramount national control of interstate railroads rests upon an even broader and deeper foundation than the relative adjustment of rates of competing shippers. Interstate shippers and passengers have the right to fair treatment in the rates for transportation upon railroads, and they also have the even more important right to have railroads upon which an efficient transportation service can take place.

It is probably fair to say that on an average at least three fourths of the railroad business handled by railroad companies in the United States is interstate and foreign business and not more than one fourth is intrastate business. As to any one railroad, this one-fourth intrastate business is split up among all the states through which that railroad runs. Consequently the interest of any one state (when tested by its intrastate business alone), in a given railroad is ordinarily a very small fraction of the total interest of the general public in the business of that railroad.

In view of the great predominance of interstate and foreign traffic, the successful operation of the railroads is a matter of concern far more to the nation than to the intrastate business of any individual state or of all the individual states put together.

It is indispensable to the successful conduct of railroads under private ownership that they shall enjoy a net income sufficient to enable them to attract the additional capital which they need in order to keep their public service abreast of the growth of business and of the increasing public demand for improved and safer service. If this condition fails the breakdown of railroad credit will result and national ownership or national guaranty of railroad securities must follow. Therefore, until the nation elects to change the present policy of private ownership, it is a matter of paramount interest to the nation that the railroads necessary to carry the interstate and foreign traffic in which the nation is interested shall enjoy a sufficient net income to continue the proper development of their service.

An impairment of the net income of a railroad company through the action of a single state is necessarily an impairment of the company's general resources and credit and the injurious consequences cannot be segregated and confined to the company's intrastate business in that state. Railroad operations for interstate purposes and for intrastate purposes are inseparably intermingled and money invested in railroad improvements is devoted indiscriminately to intrastate service and to interstate service. Investors in determining whether to invest in the securities of a railroad company look at its returns as a whole. If they are confronted with the probability that the railroad company's net income is going to be cut to the extent of \$1,000,000 per year, that cut is the ultimate fact which arrests the investor. It makes no difference

to him whether the cut comes from state action or federal action. The result in all cases of substantial impairment of net income is the same, regardless of the source of the reduction, that the raising of money for railroad improvement is rendered more difficult and costly if not temporarily impracticable.

The impairment of railroad credit by state action may come from increases in operating expenses and taxes or from reductions in revenues or from requirements of additional capital expenditures. The extent of the burdens resulting from state action on these matters is not generally understood, has never been adequately catalogued and presented, and is only imperfectly appreciated by the railroad managers themselves.

It is probably true that the greatest impairment comes through increases in operating expenses and taxes, although reductions in rates are perhaps more obvious. The state laws relative to full crews, length of trains, hours of service, and all the countless details of operation impose in the aggregate enormous burdens upon railroad companies, seriously diminish their net income and impair their credit to the prejudice of the interests of the nation.

In the matter of rates there is a serious direct impairment of general railroad credit due to the loss of revenue resulting from unduly low rates as applied to intrastate business in a particular state. But state action has a still further important bearing upon railroad results because in many matters the state rates have a controlling effect upon rates beyond the borders of the states. Rates fixed by the state of Missouri between St. Louis and Kansas City control the rates between points in Illinois and Indiana and points in Kansas and Colorado. Rates prescribed by the state of Ohio have a controlling influence upon rates between Ohio and Indiana and Illinois points and even upon rates wholly within the states of Indiana and Illinois. Rates fixed by the state of Georgia, coupled with ocean rates to Georgia ports, control the rates from New York and Philadelphia to Georgia points and other points in the Southeast, and this in turn controls the rates from Louisville and Cincinnati, St. Louis and Chicago to the same points in the Southeast. Rates fixed by the state of Texas from Galveston to Texas points, coupled with ocean rates to Galveston, control to a large extent the interstate rate structure from New York and many other cities to Texas points.

In these ways it is always possible, and it frequently happens, that the action of a single state taken by legislators or commissioners who, of course, are charged with no responsibility as to national affairs and have no adequate opportunity or encouragement to take a national survey of the situation, operates directly to increase expenses or cut down revenues and thereby to impair the net income and consequently the credit of a railroad company when perhaps more than ninety per cent of the business of the company is, in a constitutional sense, entirely beyond the jurisdiction of that state and when the welfare and credit of the company is primarily a matter of national concern.

But the difficulties go beyond matters which relate to the net income from railroad operations. The issue of railroad securities is largely dependent upon state action, although those securities are issued primarily to raise money for railroad development which is primarily and principally for national as distinguished from state use. A state may withhold or delay action upon the issue of securities to the serious prejudice of the interest of other states and of the nation.

Again, the ability of a railroad company to carry on business to the advantage of the country generally may be dependent on its getting a charter or a license from a particular state although not five per cent of the company's business may be intrastate traffic in that state.

As was said by the Supreme Court in the Shreveport case above referred to, "It was recognized at the beginning that the nation could not prosper if interstate and foreign trade were governed by many masters." It is becoming increasingly manifest that the railroad credit which is indispensable to provide under private ownership the channels for interstate and foreign trade cannot be permanently secured if the factors which must underlie that credit are governed by "many masters," that is, by forty-eight states, as well as by the nation.

To an important extent the relief from the injurious effect of the regulations of the "many masters" may come from the Interstate Commerce Commission exerting emphatically the powers conferred upon it by the Interstate Commerce Act and recognized and enforced in the Shreveport Case.

With reference to matters outside of the scope of the Inter-

state Commerce Act, injurious state action in extreme cases may be set aside by the Supreme Court of the United States on the ground that such action constitutes such a direct burden upon commerce among the states as to be unconstitutional even in the absence of action by Congress. It is not impossible that the increasing appreciation of the intimate relation between the credit of a railroad company as a whole and any substantial impairment of that company's net income by any state will lead the Supreme Court to afford an increasingly important protection even in the absence of action by Congress.

But the extent to which the Interstate Commerce Commission may go and the extent to which the Supreme Court may go are for the present matters of doubt and uncertainty, to be developed very slowly through a long period of years. Meanwhile railroad credit, which for any one company is a single and indivisible thing of paramount importance to the Nation, is being menaced by the claims of power and by the exercise of power by forty-eight masters in addition to the Nation itself. The condition is one which calls for further comprehensive and thorough Congressional action, which, of course, should not be taken except after a profound study of the situation in all its bearings. But the beginning of that study by Congress ought not to be delayed.